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In re Application of
BLOTT *et al*
U.S. Application No.: 10/599,725
PCT No.: PCT/GB2005/001595
Int. Filing Date: 27 April 2005
Priority Date: 27 April 2004
Attorney Docket No.: P9072US00/MP
For: APPARATUS FOR CLEANSING
WOUNDS WITH MEANS FOR SUPPLY
OF THERMAL ENERGY TO THE
THERAPY FLUID

DECISION

This decision is in response to applicants' petition under 37 CFR 1.47(a) filed 21 December 2007.

BACKGROUND

On 21 May 2007, the Office mailed a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) (Form PCT/DO/EO/905) indicating that an oath or declaration and the surcharge fee were required. Applicants were given two months to respond with extensions of time available.

On 21 December 2007, applicants filed the subject response which was accompanied by, *inter alia*, a five-month extension and fee; a declaration signed by three of the four joint inventors on behalf of the nonsigning inventor; a \$130.00 surcharge fee; a \$130.00 petition fee; and an affidavit by Martin Connors.

DISCUSSION

Applicants claim that co-inventor Julian Lee-Web refuses to cooperate and have filed the subject petition under 37 CFR 1.47(a).

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the nonsigning joint inventor cannot be located or refuse to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventor on their behalf and on behalf of the nonsigning joint inventor. Items (1), (3) and (4) are satisfied in the petition.

Applicants submitted a \$130.00 petition fee. The fee for a petition under 37 CFR 1.47 is \$200.00. The difference of \$70.00 has been charged to Deposit Account No. 12-0555 as authorized. The last known address of the nonsigning inventor was provided in the affidavit. An executed declaration signed by three of the four named inventors was submitted. This declaration meets the requirements of section 409.03(a) of the MPEP and complies with 37 CFR 1.497(a) and (b).

Regarding item (2), the 37 CFR 1.47(a) applicants submitted an affidavit by Martin Connors, Patent Agent and Manager who claims that a copy of the declaration was sent to the last known address of the nonsigning inventor by mail on three different occasions. The mailings were not returned and no response has been received. As such, petitioners claim that Mr. Lee-Web refuses to cooperate.

This is not sufficient to meet item (2) of 37 CFR 1.47(a).

Section 409.03(d), II of the MPEP requires that when the 37 CFR 1.47 applicants conclude that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be provided in a statement of facts. Documentary evidence should also be provided. Here, the 37 CFR 1.47(a) applicants have not provided a statement of facts as required. The affidavit by Mr. Connors is not sufficient for this purpose. Moreover, applicants did not provide any documentary evidence such as copies of the letters sent to the nonsigning inventor and postal receipts.

In addition, the 37 CFR 1.47(a) applicants must also show that a complete copy of the application, including specification, claims and drawings was presented to the nonsigning inventor for a refusal to be accepted. In this case, the affidavit by Mr. Connors claims that only a declaration was mailed to the nonsigning inventor. This is clearly not sufficient for a refusal to be accepted.

For these reasons, item (2) of 37 CFR 1.47(a) is not yet complete.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter may be filed electronically via the USPTO EFS-Web, by facsimile to (571) 273-0459, or if mailed addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O.

10/599,725

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